

**BOARD OF APPEALS CASE NO. 4826**

\*

**BEFORE THE**

**APPLICANT: Nextel Communications of  
the Mid-Atlantic**

\*

**ZONING HEARING EXAMINER**

**REQUEST: Special Exception to locate a  
communications tower in the AG District;  
4401 Conowingo Road, Darlington**

\*

**OF HARFORD COUNTY**

\*

**Hearing Advertised**

\*

**Aegis: 6/17/98 & 6/24/98**

**HEARING DATE: August 19, 1998**

\*

**Record: 6/20/98 & 6/27/98**

\* \* \* \* \*

### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Nextel Communications of the Mid-Atlantic, is requesting a Special Exception to locate a communications tower in an Agricultural District, pursuant to Section 267-53(I)(4) of the Harford County Code.

The subject parcel is owned by Katherine J. and John T. Lamb, Jr.. and is located at 4401 Conowingo Road in the Third Election District. The parcel is identified as Parcel No. 94, in Grid 4-A, on Tax Map 20. The parcel contains 36.81 acres, more or less, all of which is zoned Agricultural.

Mr. John Lamb, Jr., appeared and testified that he and his wife are the owners of the subject property and identified the location of the property to be fairly and accurately represented by Exhibits 3, 4 and 5, which were entered into evidence. Mr. Lamb directed his attention to Exhibit No. 10, which contained photographs of the proposed tower sites, as well as Exhibit No. 6, which was a site plan for the property. Mr. Lamb testified that the tower is to be located within a fairly large enclave of trees on the property and is buffered almost completely by a very mature tree stand. Mr. Lamb indicated that the tree line effectively shields the tower from view from any angle with the exception of about 20 feet along Cedar Church Road. Mr. Lamb indicated that there are no sensitive natural features within the area where the tower is to be located.

## **Case No. 4826 - Nextel Communications**

Mr. Sean Hughes appeared and testified that he was Zoning Manager for Nextel Communications. Mr. Hughes indicated that he is familiar with site location issues, as well as site operation once a mobile communications facility is constructed and operating. He testified that there are two types of towers that may be used on the property. Exhibit No. 9 in Case No. 4826 sets forth the tower specifications for a monopole tower. Exhibit No. 9 in Case No. 4825 sets forth the tower specifications for a lattice tower. Mr. Hughes testified that the monopole tower is 188 feet tall and the lattice tower is 196 feet tall. Mr. Hughes testified that all Code requirements would be met and he reviewed the site plan admitted into evidence as Exhibit No. 6 and described the building and fence that will be contained within the compound near the tower. Mr. Hughes reviewed the "Limitations, Guides and Standards" set forth in the Code, and indicated there will be little or no traffic impact because the facility is only visited once or twice a month. He testified that the site will be an unmanned facility requiring no water or sewer service and that fire and burglary detection devices are monitored 24 hours a day remotely. The witness went on to explain that generally the towers are not lighted and they need to be lighted only when the height of the tower exceeds 200 feet. He did, however, say that the Federal Aviation Administration may require the tower to be lighted. He also indicated that the tower is served by a 200-amp service, which is the same electrical service that is supplied for newer homes.

Mr. Rowan Glidden appeared and qualified as an expert in the field of landscape architecture and land planning. Mr. Glidden indicated that he had reviewed the application, the exhibits, the Staff Report and that he had heard the testimony of all previous witnesses. Mr. Glidden testified that, in his opinion, the location was appropriate for a mobile communications tower. Mr. Glidden indicated that the site allows substantial screening and protection and indicated that the proposed tower would not adversely affect the orderly growth of the neighborhood because of the small footprint of the structure and the protection provided to adjoining property owners by requiring the tower to be setback the height of the tower plus 10 feet from adjoining property lines. Mr. Glidden went on to testify that the proposal was consistent with generally accepted planning principles and practices and was consistent with the Master Plan in an agricultural area.

## **Case No. 4826 - Nextel Communications**

Mr. Jules Cohen was admitted as an expert in the field of radio waves, radio frequency and radiation. Mr. Cohen testified that he was a consulting engineer and the principle in a consulting firm which handles in excess of 10,000 projects involving applications from the Federal Communications Commission. Mr. Cohen said that he measures field strength from various types of facilities and designs of antenna systems. Mr. Cohen testified that either tower proposed to be constructed by the Applicant complies with the regulations concerning radio frequency emissions by a very wide margin. Mr. Cohen explained that he assumed a worse case scenario and assumed maximum load on the tower by other users in addition to Nextel. As a result of this study more particularly set forth in Exhibit No. 12, Mr. Cohen determined that the radio frequency emissions from the proposed tower with only Nextel equipment installed thereon would be 150,000 times below the level which may have an adverse biological effect. He went on to explain in the event the facilities are fully loaded with additional wireless service in addition to Nextel antennas, the maximum exposure anywhere would be 15,000 times below the level which might have an adverse biological effect. Mr. Cohen went on to testify that Nextel would be required to certify on an ongoing basis that the facility remained compliant with the FCC standard through any future modifications of the tower. Mr. Cohen concluded his testimony by indicating that he had no reservation about living in homes on the subject property where the tower will be erected.

The Staff Report of the Department of Planning and Zoning recommends conditional approval and provides:

“The Department of Planning and Zoning is of the opinion that the subject request meets or exceeds the minimum Code requirements. It appears that the request should have little or no adverse impact on the surrounding community and/or the intent of the Code.”

### **CONCLUSION:**

The Applicant is requesting a Special Exception to Section 267-53(l)(4) of the Code, which provides:

“Towers, Communication and Broadcasting. These uses may be granted in the AG, B2 and B3 Districts, provided that the setback of the tower from all property lines shall be equal to the height of the tower plus ten (10) feet.”

## **Case No. 4826 - Nextel Communications**

The sole criteria set forth in the Code is whether or not the tower will be setback from all property lines a distance equal to the height of the tower plus 10 feet. The uncontradicted testimony of the Applicant and his witnesses, as well as site plans introduced as Exhibits, demonstrate that the tower will be located the height of the tower plus 10 feet from all adjoining property lines.

A special exception is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone. Creswell v. Baltimore Aviation Serv., Inc., 250 Md. 712, 719 (1970). The most recent, comprehensive and definitive statement of the law of special exceptions is found in the case of Mossberg v. Montgomery Co., 107 Md. App. 1 (1995), hereinafter referred to as “Mossberg”. Mossberg chronicles the history and development of special exception case law in Maryland and sets forth a definitive statement of the current law regulating a special exception. The law of Mossberg is controlling in this case. The Court of Special Appeals in Mossberg stated:

“ Thus, it is not whether a special exception/conditional use is compatible with permitted uses that is relevant in this administrative proceeding. The legislative body, by designating the special exception, has deemed it to be generally compatible with other uses. In special exception cases, therefore, generally compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a permitted use by way of special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effect in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is considered by the agency.”

## **Case No. 4826 - Nextel Communications**

**Mossburg** stands for the proposition that once the Code requirements have been met, a special exception cannot be denied unless the opposition demonstrates that there are greater adverse impacts at this particular location than other locations in the district.

No evidence was introduced to indicate that the location of the communications tower at this location would have any greater impact than if located elsewhere in the district nor was there testimony that approval of the special exception would adversely effect the public health, safety or general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood, as set forth in Section 267-9(I).

Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request for a Special Exception for a communications tower on the subject parcel be approved, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the tower, communications equipment building and fencing.
2. The Applicant prepare and submit a site plan for review by the Development Advisory Committee.

Date        OCTOBER 5, 1998

L. A. Hinderhofer  
Zoning Hearing Examiner